

(3) *Final decision.* A reconsideration decision issued by the National Coordinator is final and not subject to further review.

§ 170.540 ONC-ACB status.

(a) *Acknowledgement and publication.* The National Coordinator will acknowledge and make publicly available the names of ONC-ACBs, including the date each was authorized and the type(s) of certification each has been authorized to perform.

(b) *Representation.* Each ONC-ACB must prominently and unambiguously identify the scope of its authorization on its Web site and in all marketing and communications statements (written and oral) pertaining to its activities under the ONC HIT Certification Program.

(c) *Renewal.* An ONC-ACB is required to renew its status every three years. An ONC-ACB is required to submit a renewal request, containing any updates to the information requested in § 170.520, to the National Coordinator 60 days prior to the expiration of its status.

(d) *Expiration.* An ONC-ACB's status will expire three years from the date it was granted by the National Coordinator unless it is renewed in accordance with paragraph (c) of this section.

[76 FR 1325, Dec. 7, 2011, as amended at 77 FR 54291, Sept. 4, 2012]

§ 170.545 Complete EHR certification.

(a) When certifying Complete EHRs, an ONC-ACB must certify in accordance with all applicable certification criteria adopted by the Secretary at subpart C of this part.

(b) An ONC-ACB must provide the option for a Complete EHR to be certified solely to the applicable certification criteria adopted by the Secretary at subpart C of this part.

(c) *Gap certification.* An ONC-ACB may provide the option for and perform gap certification of previously certified Complete EHRs.

(d) *Inherited certified status.* An ONC-ACB must accept requests for a newer version of a previously certified Complete EHR to inherit the certified status of the previously certified Complete EHR without requiring the newer version to be recertified.

(1) Before granting certified status to a newer version of a previously certified Complete EHR, an ONC-ACB must review an attestation submitted by the developer of the Complete EHR to determine whether any change in the newer version has adversely affected the Complete EHR's capabilities for which certification criteria have been adopted.

(2) An ONC-ACB may grant certified status to a newer version of a previously certified Complete EHR if it determines that the capabilities for which certification criteria have been adopted have not been adversely affected.

(e) An ONC-ACB that has been authorized to certify Complete EHRs is also authorized to certify all EHR Modules under the ONC HIT Certification Program.

[76 FR 1325, Dec. 7, 2011, as amended at 77 FR 54291, Sept. 4, 2012]

§ 170.550 EHR Module certification.

(a) When certifying EHR Module(s), an ONC-ACB must certify in accordance with the applicable certification criteria adopted by the Secretary at subpart C of this part.

(b) An ONC-ACB must provide the option for an EHR Module(s) to be certified solely to the applicable certification criteria adopted by the Secretary at subpart C of this part.

(c) *Gap certification.* An ONC-ACB may provide the option for and perform gap certification of previously certified EHR Module(s).

(d) An ONC-ACB may provide an updated certification to a previously certified EHR Module(s).

(e) *Privacy and security certification.* For certification to the 2011 Edition EHR certification criteria, EHR Module(s) shall be certified to all privacy and security certification criteria adopted by the Secretary, unless the EHR Module(s) is presented for certification in one of the following manners:

(1) The EHR Modules are presented for certification as a pre-coordinated, integrated bundle of EHR Modules, which would otherwise meet the definition of and constitute a Complete EHR, and one or more of the constituent EHR Modules is demonstrably responsible for providing all of the privacy

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and security capabilities for the entire bundle of EHR Modules; or

(2) An EHR Module is presented for certification, and the presenter can demonstrate and provide documentation to the ONC-ACB that a privacy and security certification criterion is inapplicable or that it would be technically infeasible for the EHR Module to be certified in accordance with such certification criterion.

(f) When certifying an EHR Module to the 2014 Edition EHR certification criteria, an ONC-ACB must certify the EHR Module in accordance with the certification criteria at:

(1) Section 170.314(g)(1) if the EHR Module has capabilities presented for certification that would support a meaningful use objective with a percentage-based measure;

(2) Section 170.314(g)(3) if the EHR Module is presented for certification to one or more listed certification criteria in § 170.314(g)(3); and

(3) Section 170.314(g)(4).

(g) *Inherited certified status.* An ONC-ACB must accept requests for a newer version of a previously certified EHR Module(s) to inherit the certified status of the previously certified EHR Module(s) without requiring the newer version to be recertified.

(1) Before granting certified status to a newer version of a previously certified EHR Module(s), an ONC-ACB must review an attestation submitted by the developer(s) of the EHR Module(s) to determine whether any change in the newer version has adversely affected the EHR Module(s)' capabilities for which certification criteria have been adopted.

(2) An ONC-ACB may grant certified status to a newer version of a previously certified EHR Module(s) if it determines that the capabilities for which certification criteria have been adopted have not been adversely affected.

[76 FR 1325, Dec. 7, 2011, as amended at 77 FR 54291, Sept. 4, 2012]

§ 170.553 Certification of health information technology other than Complete EHRs and EHR Modules.

An ONC-ACB authorized to certify health information technology other than Complete EHRs and/or EHR Mod-

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ules must certify such health information technology in accordance with the applicable certification criterion or certification criteria adopted by the Secretary at subpart C of this part.

§ 170.555 Certification to newer versions of certain standards.

(a) ONC-ACBs may certify Complete EHRs and/or EHR Module(s) to a newer version of certain identified minimum standards specified at subpart B of this part, unless the Secretary prohibits the use of a newer version for certification.

(b) *Applicability of a newer version of a minimum standard.* (1) ONC-ACBs are not required to certify Complete EHRs and/or EHR Module(s) according to newer versions of standards identified as minimum standards in subpart B of this part, unless and until the incorporation by reference of a standard is updated in the FEDERAL REGISTER with a newer version.

(2) A certified Complete EHR or certified EHR Module may be upgraded to comply with newer versions of standards identified as minimum standards in subpart B of this part without adversely affecting its certification status, unless the Secretary prohibits the use of a newer version for certification.

[77 FR 54291, Sept. 4, 2012]

§ 170.557 Authorized certification methods.

An ONC-ACB must provide remote certification for both development and deployment sites.

§ 170.560 Good standing as an ONC-ACB.

An ONC-ACB must maintain good standing by:

(a) Adhering to the Principles of Proper Conduct for ONC-ACBs;

(b) Refraining from engaging in other types of inappropriate behavior, including an ONC-ACB misrepresenting the scope of its authorization, as well as an ONC-ACB certifying Complete EHRs and/or EHR Module(s) for which it does not have authorization; and

(c) Following all other applicable Federal and State laws.